

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KIMBERLY PLETCHER, et al.,)	
)	
Consolidated Plaintiffs,)	
)	
v.)	Civil Action No. 2:20-754
)	
GIANT EAGLE INC., et al.,)	
)	
Defendants.)	

ORDER APPOINTING DISCOVERY SPECIAL MASTER

AND NOW, this 20th day of April, 2021, upon consideration of the Court's April 16, 2021 Order, (Docket No. [74]), and the parties' Joint Status Report Regarding Selection of Special Master, (Docket No. [75]), wherein the parties advise that they have met and conferred and selected Mary-Jo Rebelo, Esq. to serve as discovery special master in this case,

IT IS HEREBY ORDERED that, pursuant FED. R. CIV. P. 53 and with the consent of the parties, the following individual is appointed as Discovery Special Master until further ORDER of this Court:

Mary-Jo Rebelo, Esq.
Burns White LLC
(412) 995-3347
mjrebelo@burnswhite.com

Before **April 22, 2021**, Ms. Rebelo shall submit to the Court an affidavit disclosing whether there are any grounds for disqualification under 28 U.S.C. § 455. *See* FED. R. CIV. P. 53(a)(2), (b)(3).

IT IS FURTHER ORDERED that the Special Master's Appointment is upon the filing of the affidavit, and her duties include presiding over the parties' discovery disputes.

IT IS FURTHER ORDERED that the Special Master shall diligently perform her duties in a timely and efficient manner. The Court strongly believes that any contested discovery matters should be resolved through mediation. However, in the event that the parties are unable to resolve same, any motions and related briefing thereon shall be filed on the Court's CM/ECF system and the Special Master shall prepare a Report and Recommendation on such motions.

IT IS FURTHER ORDERED that the Special Master shall have the authority to convene conferences in person, by video, or by means of some other video-based platform; accept evidence from the parties; order briefing on certain issues; and/or resolve disputes as she deems appropriate. *See Misc. No. 2:20-mc-394-MRH* (Administrative Order Concerning Jury Trials and Certain other Proceedings Relative to COVID-19 Matters). The Special Master shall be empowered to communicate on an *ex parte* basis with a party for the purpose of facilitating resolution of disputes including but not limited to a mediation of disagreements related to discovery.

IT IS FURTHER ORDERED that any Report and Recommendation by the Special Master must be filed on the Court's CM/ECF System and any objections to same must be filed within 7 days, along with the underlying materials presented to the Special Master (including any briefing, evidence, and/or transcript(s) of proceedings) which shall be filed with the Court by the objecting party and a courtesy copy of same shall be delivered to the Clerk of Court. Any responses to objections by the opposing party shall be filed within 7 days. No further briefing will be permitted without leave of Court. If no objections are filed within the 7-day period, the Court will adopt the Report and Recommendation as the Opinion/Order of the Court. The Special Master's findings of fact and conclusions of law will be reviewed *de novo*.

IT IS FURTHER ORDERED that the fees of the Special Master shall be shared equally by Plaintiffs and Defendants (1/2 by Plaintiffs and 1/2 by Defendants). The parties shall timely pay

any invoices from the Special Master. Depending on the result of the litigation, the Court will entertain cost shifting motions. *See Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 674 F.3d 158, 171 (3d Cir. 2012), cert. denied, 133 S. Ct. 233 (2012); *Langenberg v. Papalia*, Civ. A. No. 12-174, 2014 WL 4792125 (W.D. Pa. Sept. 24, 2014).

IT IS FURTHER ORDERED that the parties shall provide Ms. Rebelo with any materials necessary to the disposition of her duties as Special Master (including prior filings on the CM/ECF System) through email, disk, or hard copy, at her preference and at the parties' cost.

IT IS FURTHER ORDERED that the Special Master may, at any time communicate *ex parte* with the Court for any purpose relating to the duties described herein. In particular, if the Special Master identifies any matters that pose particular or unique problems, the Court shall be consulted.

IT IS FURTHER ORDERED that the following are the primary contact people for the Special Master:

Thomas B. Anderson, Esq.
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
Telephone: (412) 232-3400
tanderson@trc-law.com
For Plaintiffs

Jeremy D. Engle, Esq.
MARCUS & SHAPIRA LLP
35th Floor, One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219
Telephone: (412) 471-3490
Facsimile: (412) 391-8758
engle@marcus-shapira.com
For Defendants

FINALLY, IT IS ORDERED that pursuant to Rule 53(b)(2)(C), the Special Master shall maintain orderly files consisting of all documents submitted to her by the parties and any of her written orders, findings, and/or recommendations. The Special Master shall report to the Court as directed by the Court. The Special Master shall file any written orders, findings, and/or recommendations with the Court via the Court's ECF system. Such filing shall fulfill the Special Master's duty to serve her order(s) on the parties pursuant to Rule 53(e). Except for approved *ex parte* communications, all parties shall be copied on any party's communications with or submissions to the Special Master.

s/Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: All counsel of record.

Mary-Jo Rebelo, Esq. (mjrebelo@burnswhite.com)